

STATE OF MICHIGAN
COURT OF APPEALS

DOROTHY COLLINS,

Plaintiff-Appellee,

v

CITY OF DETROIT DEPARTMENT OF
TRANSPORTATION,

Defendant-Appellant.

UNPUBLISHED
December 9, 2003

No. 249379
Wayne Circuit Court
LC No. 02-234653-NF

Before: Saad, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Defendant appeals by leave granted an order compelling defendant to pay for plaintiff's surgery. We remand.

Defendant contends that the grant of a preliminary injunction compelling defendant to pay plaintiff's surgery costs was an abuse of discretion by the trial court. Defendant argues that plaintiff failed to demonstrate irreparable harm or a relationship of her claimed injury to her fall on defendant's bus and that plaintiff had an adequate remedy at law, precluding the issuance of injunctive relief. Defendant further asserts that upholding the trial court's order would improperly permit plaintiff recovery on her claim without a full adjudication on the merits.

We note that there has been a material change in circumstances since the trial court granted the injunction. The parties now do not occupy the same positions they occupied before the court on January 24, 2003, the date of the order granting the injunction. In its brief, defendant argues that surgery for plaintiff is not necessary given the failure of plaintiff to secure the surgery when the injunction was in effect and given the absence of any dire consequences to plaintiff's health in the interim period. Further, in her appellate pleadings, plaintiff acknowledges that her physical condition and medical needs have changed and that surgery is no longer a necessary or appropriate intervention. Indeed, plaintiff has offered to stipulate to the vacation of the injunction.

Therefore, no disputed issue remains on appeal. The relief sought by defendant has been stipulated to by plaintiff, and this appeal is moot. See *Michigan Nat Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (discussing mootness). We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Jane E. Markey

/s/ Patrick M. Meter